

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.274 OF 2005

Ramganes M. Singh & anr. Petitioners

versus

State of Maharashtra & ors.	Respondents
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ALONG WITH
WRIT PETITION NO.276 OF 2005

Surendrapratap R. Singh & anr. Petitioners

versus

State of Maharashtra & ors.	Respondents
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Shri A.R.Pandey i/by M/s.Pandey & Co. for
petitioners.

Shri A.Y.Sakhare with K.V.Chheda for respondent no.3.

Shri D.A.Patil, AGP for respondents 1 and 2.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 27th January 2006

PC :

1. These writ petitions under Article 227 of the Constitution of India are at the instance of persons who are aggrieved by the declaration of

the properties namely piece and parcel of land with tenements and structures bearing CTS No.463 (Part-II), Survey No.61-A, Hissa No.1, Village Vile Parle, Taluka Andheri totally admeasuring about 916.80 sq.mtrs. in the first petition and in the second petition 738 sq. mtrs. bearing CTS No.464 (Part).

2. The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Tribunal which is the appellate authority in this case, has passed the impugned order dismissing petitioners' appeals. The Tribunal has upheld the notification issued by the Competent Authority declaring the properties as slum areas.

3. The contention raised by Shri Pandey appearing in support of these petitions is that the Tribunal has not adhered to the requirements of Section 4(4) of the Slum Act, inasmuch, a public notice contemplated by these provisions, was not published and the proceedings before the appellate authority stand vitiated for non compliance with the mandate of these provisions. He submits that the provisions contained in the Slum Act contemplate that the Tribunal has to publish a notice informing the public in the

local area in which the slum area is situate, about the intention of the Competent Authority and call upon the respondents to file their objections. The objections may be of varied nature i.e. opposing the appeal of the person aggrieved or supporting the same. In his submission, once this provision is not complied with, then the appeal cannot be heard and any judgement delivered in such an appeal, is liable to be set aside for want of compliance of these provisions.

4. He also submits that the properties which are covered by the notification of the competent authority, are reserved for a public purpose (Public Garden). Once there is such a reservation, then the properties cannot be developed. He relies upon the documents pertaining to the reservation and which are annexed to the writ petitions.

5. He also submits that fourth respondent trust desires to develop the properties and provide all such amenities as are necessarily to be provided in law, and therefore, interest of justice would be served if an opportunity is given to the owner to develop the properties instead of any other

entity.

6. I am unable to accept any of these submissions. I called upon Shri Pandey to satisfy me that such contentions were raised before the Appellate Authority. He invited my attention to the memo of appeal, copy of which is annexed to this writ petitions. From a perusal thereof it appears that apart from certain civil suit being instituted by the petitioners, as far as Writ Petition No.274/2005 is concerned, the petitioner therein had filed a Writ Petition to challenge the notification under section 4(1) pertaining to the property covered therein. This writ petition was disposed of with a direction that the petitioner herein who was also a petitioner in that writ petition can move the appellate authority. In para no.17 of the appeal memo there is no contention raised with regard to the appellate tribunal having not complied with the mandatory procedure, according to Shri Pandey. It may be true that the procedure is required to be followed after the Appeal is filed, but nothing prevented the petitioners from either amending the memo of appeal or by any subsequent proceedings bring to the notice of the appellate tribunal the infirmity in the procedure

adopted by it. That apart from a perusal of the judgement of the Tribunal it appears that all procedural aspects were not high lighted but the matter proceeded on the basis that the same have been complied with. This is clear from paragraph 10 of the judgement of the Slum Tribunal. The appeal memos took up the ground that the competent authority failed to abide by the procedure contemplated in law. Be that as it may, when the appellate authority has proceeded to hear the matter on merits and the contentions raised before me having not been raised, as also not argued, it will not be proper to entertain these submissions of Shri Pandey.

7. As far as the reservation of the property for public purpose of garden, in my view, under challenge in this petition is an order of the slum area tribunal in the appeals preferred by the petitioners. The judgements are not vitiated by any infirmity muchless serious enough so as to warrant this Court's interference under Article 227 of the Constitution of India. The Tribunal has found that the basic amenities are lacking and competent authority has rightly stepped in.

8. The petitioners and others supporting them

could not demonstrate that basic amenities are available already. The report of the Inspecting Authority/Surveyor has been referred to in para 11 of the impugned order and that high lights the position at site.

9. With regard to the reservation it is for the State Government and the Municipal Corporation to take appropriate steps and needless to state that the State Government will take due note of the subject reservation.

10. As far as development of this property post declaration of the same as slum area, it is for the authority concerned and in-charge of such development to consider all such proposals as are moved before it in accordance with law. That is not a matter which can be gone into in these writ petitions.

11. Shri Sakhare - learned Senior Counsel appearing for third respondent has invited my attention to an order passed by this Court on 20th July 2005 (Coram : Dr.D.Y.Chandrachud, J.) in Writ Petition No.542 of 2005. The property covered in that judgement appears to be identical. The order under challenge is also the

same. The contentions are also of identical nature. This petition has been dismissed. In my view, the said order would also apply with full force to the present petition as well.

12. For the reasons already indicated as also those set out in the order in Writ Petition No.542 of 2005, present petition stands dismissed.

(S.C.DHARMADHIKARI, J.)